

EXHIBIT 1

1 HAROLD P. GEWERTER, ESQ.
2 Nevada Bar No. 499
3 HAROLD P. GEWERTER, ESQ., LTD.
4 2705 Airport Drive
5 North Las Vegas, Nevada 89032
6 Office: (702) 382-1714
7 Fax: (702) 382-1759
8 Attorney for Defendant

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12 * * * * *

13 GERALD HESTER, on behalf of himself and | CASE NO.: 2:09-CV-00117-RLH-RJJ
14 all others similarly situated,

15 Plaintiff,
16
17 vs.
18 VISION AIRLINES, INC.,
19
20 Defendant.

DEFENDANT VISION AIRLINES, INC.'S
THIRD SUPPLEMENTAL RESPONSES
TO PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION

21
22 Without waiving Defendant VISION AIRLINES, INC.'s objections contained in
23 DEFENDANT VISION AIRLINES, INC.'S RESPONSES TO PLAINTIFF'S FIRST
24 REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the
following Third Supplemental Responses to Plaintiff's First Request for Production. These
responses are to Plaintiff's narrowed requests as per their letter of December 21, 2009.

25 This material is mainly responsive to Request No. 15, however, it is also partially
26 responsive to Requests No's. 9 and 12.

27 **Narrowed Request 15:** We request that Vision provide us with a list of all
28 Airbridge Program employees, indicating their dates of employment, position, mailing
address, and telephone number.

29 / / /
30 / / /

See Bates Stamped No's. HEST0031247 to HEST0033541 (CD-ROM).

DATED this 22 day of January, 2010.

HAROLD P. GEWERTER, ESQ., LTD.

HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
2705 Airport Drive
North Las Vegas, Nevada 89032
Attorney for Defendant

CERTIFICATE OF SERVICE

Certification is hereby made that a true and correct copy of the foregoing Defendant Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production of Documents was served this 22nd day of January, 2010, in the following manner:

X By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals: and/or

By being hand delivered to the following individuals at their last known address,
this same date, as follows: and/or

By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

Via Federal Express
DAVID M. BUCKNER, ESQ.
2525 Ponce de Leon, 9th Floor
Coral Gables, FL 33134

Attorneys for Plaintiffs

Via Regular U.S. Mail w/o Enclosure
Ross C. Goodman, Esq.
520 S Fourth Street
Las Vegas, NV 89101

An employee of Harold P. Gewertzer, Esq., Ltd.

EXHIBIT 2

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6 Office: (702) 382-1714
7 Fax: (702) 382-1759
8 Attorney for Defendant

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 * * * * *

13 GERALD HESTER, on behalf of himself and all others similarly situated, CASE NO.: 2:09-CV-00117-RLH-RJJ

14 Plaintiff,
15 vs.
16 VISION AIRLINES, INC.,
17 Defendant.

18 DEFENDANT VISION AIRLINES, INC.'S
19 THIRD SUPPLEMENTAL RESPONSES
20 TO PLAINTIFF'S FIRST REQUEST FOR
21 PRODUCTION

22 Without waiving Defendant VISION AIRLINES, INC.'s objections contained in DEFENDANT VISION AIRLINES, INC.'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the following Third Supplemental Responses to Plaintiff's First Request for Production. These responses are to Plaintiff's narrowed requests as per their letter of December 21, 2009.

23 This material is mainly responsive to Request No. 15, however, it is also partially responsive to Requests No's. 9 and 12.

24
25 **Narrowed Request 15:** We request that Vision provide us with a list of all Airbridge Program employees, indicating their dates of employment, position, mailing address, and telephone number.

26
27
28 ///
29 ///
30

1 See Bates Stamped No's. HEST0030499 to HEST0031246 (CD-ROM).

2 DATED this 14 day of January, 2010.

3 HAROLD P. GEWERTER, ESQ., LTD.

4 
5 HAROLD P. GEWERTER, ESQ.

6 Nevada Bar No. 499

7 2705 Airport Drive

8 North Las Vegas, Nevada 89032

9 Attorney for Defendant

10 **CERTIFICATE OF SERVICE**

11 Certification is hereby made that a true and correct copy of the foregoing Defendant
12 Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production
13 of Documents was served this 14 day of January, 2010, in the following manner:

14 By being placed into an envelope bearing First Class Postage and placed into the
15 U.S. Mails, this same date, addressed to the following individuals; and/or

16 By being hand delivered to the following individuals at their last known address,
17 this same date, as follows; and/or

18 By being served via facsimile to the following individuals at their last known
19 facsimile number, this same date, as follows:

21 **Via Federal Express**

22 DAVID M. BUCKNER, ESQ.
23 2525 Ponce de Leon, 9th Floor
Coral Gables, FL 33134

24 Attorneys for Plaintiffs

21 **Via Regular U.S. Mail w/o Enclosure**

22 Ross C. Goodman, Esq.
520 S Fourth Street
Las Vegas, NV 89101

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26 An employee of Harold P. Gewerter, Esq., Ltd.

EXHIBIT 3

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6 Office: (702) 382-1714
7 Fax: (702) 382-1759
8 Attorney for Defendant

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 * * * * *

13 GERALD HESTER, on behalf of himself and all others similarly situated,

14 CASE NO.: 2:09-CV-00117-RLH-RJJ

15 Plaintiff,
16 vs.
17 VISION AIRLINES, INC.,
18 Defendant.

19 DEFENDANT VISION AIRLINES, INC.'S
20 THIRD SUPPLEMENTAL RESPONSES
21 TO PLAINTIFF'S FIRST REQUEST FOR
22 PRODUCTION

23 Without waiving Defendant VISION AIRLINES, INC.'s objections contained in DEFENDANT VISION AIRLINES, INC.'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the following Third Supplemental Responses to Plaintiff's First Request for Production. These responses are to Plaintiff's narrowed requests as per their letter of December 21, 2009.

24 This material is mainly responsive to Request No. 15, however, it is also partially responsive to Requests No's. 9 and 12.

25 **Narrowed Request 15:** We request that Vision provide us with a list of all Airbridge Program employees, indicating their dates of employment, position, mailing address, and telephone number.

26 / / /
27 / / /
28 / / /

1 See Bates Stamped No's. HEST0030001 to HEST0030498 (CD-ROM).

2 DATED this 12 day of January, 2010.

3 HAROLD P. GEWERTER, ESQ., LTD.

4 

5
6 HAROLD P. GEWERTER, ESQ.
7 Nevada Bar No. 499
8 2705 Airport Drive
North Las Vegas, Nevada 89032
9 Attorney for Defendant

10 **CERTIFICATE OF SERVICE**

11 Certification is hereby made that a true and correct copy of the foregoing Defendant
12 Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production
13 of Documents was served this 12th day of January, 2010, in the following manner:

14 By being placed into an envelope bearing First Class Postage and placed into the
15 U.S. Mails, this same date, addressed to the following individuals; and/or

16 By being hand delivered to the following individuals at their last known address,
17 this same date, as follows; and/or

18 By being served via facsimile to the following individuals at their last known
19 facsimile number, this same date, as follows:

21 **Via Federal Express**

22 DAVID M. BUCKNER, ESQ.
2525 Ponce de Leon, 9th Floor
23 Coral Gables, FL 33134

24 Attorneys for Plaintiffs

25 **Via Regular U.S. Mail w/o Enclosure**

26 Ross C. Goodman, Esq.
520 S Fourth Street
Las Vegas, NV 89101

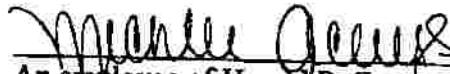
27 
28 An employee of Harold P. Gewerter, Esq., Ltd.

EXHIBIT 4

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8 Attorney for Defendant

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11 UNITED STATES DISTRICT COURT
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13 DISTRICT OF NEVADA
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15 GERALD HESTER, on behalf of himself and , CASE NO.: 2:09-CV-00117-RLH-RJJ
16 all others similarly situated.

17 Plaintiff:
18 vs.
19 VISION AIRLINES, INC..

20
21 DEFENDANT VISION AIRLINES, INC.'S
22 RESPONSES TO PLAINTIFF'S FIRST
23 REQUEST FOR PRODUCTION
24
25
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27
28

29 All the items produced pursuant to this Defendant Vision Airlines, Inc.'s Responses to
30 Plaintiff's First Request for Production are hereby designated "CONFIDENTIAL, ATTORNEYS
31 ONLY" as defined in the Protective Order filed in this matter on or about March 20, 2009.

32
33 GENERAL OBJECTIONS

34 1. Defendant objects to Plaintiff's "Instructions" and "Definitions" to the extent they
35 purport to impose discovery obligations that differ from or exceed the discovery obligations
36 imposed by the Federal Rules of Civil Procedure.

37 2. Defendant objects to the Requests for Production of Documents to the extent that
38 they seek information protected by the attorney-client privilege, the work-product privilege, or
39 any other privilege, protection, or immunity applicable under the governing law.

40 3. Defendant objects to the Requests for Production of Documents to the extent that
41 they are overly broad, unduly burdensome, oppressive, and/or seek information that is not

1 relevant to the issues in this lawsuit or reasonably calculated to lead to the discovery of
2 admissible evidence.

3 4. These General Objections are made, to the extent applicable, in response to each
4 of the Requests for Production of Documents as if the objections were fully set forth therein.

5 5. Defendant responds to each of the Requests for Production of Documents based
6 upon information and documentation available as of the date hereof and reserves the right to
7 supplement and amend their responses.

8 **REQUEST NO. 1:**

9 All communications and documents that relate to hazard pay.

10 **RESPONSE NO. 1:**

11 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
12 *States v. Philip Morris Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
13 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
14 Defendant has been in business) and does not limit its scope to Iraq and Afghanistan which are
15 the subjects of this case, as alleged in Plaintiff's Complaint.

16 Further Objection. This request violates the *Reynolds* doctrine as set forth in *United*
17 *States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the
18 "danger that compulsion of evidence will expose military matters which, in the interest of
19 national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed,
20 expanded and explained recently in *Mohamed v. Jeppesen*, 9th Cir. Court of Appeals, Case No.
21 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any
22 evidence sought to be excluded to determine whether its contents are secret within the meaning
23 of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate,
24 however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933
25 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not
26 necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires
27 "simply that the evidence is unavailable, as though a witness had died [or a document had been
28 destroyed], and the case will proceed accordingly, with no consequences save those resulting

1 from the loss of evidence.”” *Al-Haramain* 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709
2 F.2d 51, 64 (D.C. Cir. 1983)).

3 Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED
4 STATES under which Plaintiff explicitly consents to being governed by a number of statutes
5 which protect against disclosure that may compromise the national security including but not
6 limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt
7 to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything
8 connected to the national defense, §798 of Title 18 of the United States Code which makes it a
9 crime to disclose classified information concerning the communication intelligence activities of
10 the United States or any foreign government, and §1924 of Title 18 of the United States Code
11 which makes it a crime to remove or retain classified documents or material if such material has
12 been gained by virtue of one’s office, employment, position or contract.

13 Not notwithstanding the objection, Defendant has no documents or communications relating
14 to “hazard pay” as set forth in Plaintiff’s Request.

15 **REQUEST NO. 2:**

16 All contracts between or among any of Vision, Capital Aviation, CSC or McNeil, that
17 relate to the provision of air transport services to Iraq or Afghanistan.

18 **RESPONSE NO. 2:**

19 See Response 2 attached hereto (12 pages).

20 **REQUEST NO. 3:**

21 All documents including, but not limited to, any bids or proposals that relate to any or all
22 of the contracts between or among any of Vision, Capital Aviation, CSC or McNeil for the
23 provision of air transport services to Iraq or Afghanistan.

24 **RESPONSE NO. 3:**

25 See Response 3 attached hereto (18 pages).

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1 **REQUEST NO. 4:**

2 All communications to, from, or among Vision, Capital Aviation, CSC or McNeil, that
3 relate to the provision of air transport services to Iraq or Afghanistan, including, but not limited
4 to, communications about hazard pay.

5 **RESPONSE NO. 4:**

6 See Response 3 attached hereto (18 pages).

7 **REQUEST NO. 5:**

8 All contracts and associated documents, including but not limited to, all requests for
9 proposal, bids, proposal and drafts, with any branch, corporation, agency or division of or
10 controlled by the United States government relating to the provision of air transport services to
11 Iraq or Afghanistan.

12 **RESPONSE NO. 5:**

13 Defendant has no documents responsive to the above request.

14 **REQUEST NO. 6:**

15 All documents that relate to any contract with any branch, corporation, division or agency
16 of or controlled by the United States government relating to the provision of air transport
17 services to Iraq or Afghanistan.

18 **RESPONSE NO. 6:**

19 Defendant has no documents responsive to the above request.

20 **REQUEST NO. 7:**

21 All communications to, from or between any branch, corporation, division or agency of
22 or controlled by the United States government, including but not limited to, any affidavits,
23 affirmations, or communications about hazard pay that relate to the provision of air transport
24 services to Iraq or Afghanistan.

25 **RESPONSE NO. 7:**

26 Defendant has no documents responsive to the above request.

1 **REQUEST NO. 8:**

2 All documents and communications that relate in any way to the compensation of flight
3 crews operating flights to or from Iraq or Afghanistan, including but not limited to, all
4 documents and communications that relate to hazard pay or any compensation specifically
5 related to personnel flying to or from Iraq or Afghanistan. Such documents and communications
6 should include invoices to, from, or among Capital Aviation, CSC, McNeil or Vision, and any
7 bids or proposals.

8 **RESPONSE NO. 8:**

9 Objection. This request is beyond the scope of permissible discovery and is overly
10 burdensome. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The
11 time limitations on the request are vague and ambiguous (Plaintiff was only employed for a
12 small percentage of the time the Defendant has been providing such services).

13 Not notwithstanding the objection, see Response 8 attached hereto (20 pages).

14 **REQUEST NO. 9:**

15 All documents and communications that relate to the flights Vision operated to or from
16 Iraq and Afghanistan, including but not limited to flight plans, flight records, schedules and lists
17 of flight personnel employed as crew member on those flights.

18 **RESPONSE NO. 9:**

19 Objection. This request is beyond the scope of permissible discovery and is overly
20 burdensome. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The
21 time limitations on the request are vague and ambiguous (Plaintiff was only employed for a
22 small percentage of the time the Defendant has been providing such services). It would also
23 include transcripts of communications with airport towers, flight controllers for every flight
24 going back four (4) years.

25 Further Objection. This request violates the *Reynolds* doctrine as set forth in *United*
26 *States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952), which creates a privilege for in which the
27 "danger that compulsion of evidence will expose military matters which, in the interest of
28 national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed

1 expanded and explained recently in *Mohamed v. Jeppesen*, 9th Cir. Court of Appeals, Case No.
 2 08-15693 (filed April 28, 2009). “Courts must undertake an independent evaluation of any
 3 evidence sought to be excluded to determine whether its contents are secret within the meaning
 4 of the privilege.” *Id.* at 4944. “Once the court determines a claim of privilege is legitimate,
 5 however, ‘even the most compelling [personal] necessity cannot overcome’ it.” *Id.* at 4937
 6 quoting *Reynolds*, 345 U.S. at 11. “Successful invocation of the *Reynolds* privilege does not
 7 necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires
 8 ‘simply that the evidence is unavailable, as though a witness had died [or a document had been
 9 destroyed], and the case will proceed accordingly, with no consequences save those resulting
 10 from the loss of evidence.’” *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709
 11 F.2d 51, 64 (D.C. Cir. 1983)).

12 Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED
 13 STATES under which Plaintiff explicitly consents to being governed by a number of statutes
 14 which protect against disclosure that may compromise the national security including but not
 15 limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt
 16 to copy, take, make, or obtain, any sketch, photograph, . . . document, writing, or note of anything
 17 connected to the national defense, §798 of Title 18 of the United States Code which makes it a
 18 crime to disclose classified information concerning the communication intelligence activities of
 19 the United States or any foreign government, and §1924 of Title 18 of the United States Code
 20 which makes it a crime to remove or retain classified documents or material if such material has
 21 been gained by virtue of one’s office, employment, position or contract.

22 Notwithstanding the objection, see Response 8 attached hereto (20 pages).

23 **REQUEST NO. 10:**

24 All documents and communications, including spreadsheets, invoices, tax returns,
 25 receipts and accounting records, that relate to Capital Aviation, CSC or McNeil’s payments to
 26 Vision for air transport services to Iraq or Afghanistan, including but not limited to payments for
 27 hazard pay.

1 **RESPONSE NO. 10:**

2 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
3 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
4 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
5 Defendant has been providing such services).

6 Not notwithstanding the objection, see Response 8 attached hereto (20 pages).

7 **REQUEST NO. 11:**

8 All documents and communications to, from, or between Dan Carson and CSC, Capital
9 Aviation, Vision or McNeil that relate to the provision of air transport services to Iraq or
10 Afghanistan, including but not limited to communications about hazard pay.

11 **RESPONSE NO. 11:**

12 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
13 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
14 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
15 Defendant has been providing such services).

16 Not notwithstanding the objection, see Response 8 attached hereto (20 pages).

17 **REQUEST NO. 12:**

18 All documents that relate to any and all payments or compensation that Vision made to
19 its employees who served as crew on flights to or from Iraq or Afghanistan, including but not
20 limited to documents that relate to payments for salary, hazard pay and reimbursement.

21 **RESPONSE NO. 12:**

22 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
23 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
24 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
25 Defendant has been providing such services).

26 Not notwithstanding the objection, see attached Response 12 (19 pages).

27

28

1 **REQUEST NO. 13:**

2 All documents and communications that relate to any compensation Vision provided its
3 flight crew employees, including pay scales, pay plans, charts, notices, accounting spreadsheets,
4 payrolls, timesheets, and flight records.

5 **RESPONSE NO. 13:**

6 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
7 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
8 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
9 Defendant has been in business) and does not limit its scope to Iraq and Afghanistan which are
10 the subjects of this case.

11 Further Objection. This request violates the *Reynolds* doctrine as set forth in *United*
12 *States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the
13 "danger that compulsion of evidence will expose military matters which, in the interest of
14 national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed,
15 expanded and explained recently in *Mohamed v. Jeppesen*, 9th Cir. Court of Appeals, Case No.
16 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any
17 evidence sought to be excluded to determine whether its contents are secret within the meaning
18 of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate,
19 however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933
20 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not
21 necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires
22 "simply that the evidence is unavailable, as though a witness had died [or a document had been
23 destroyed], and the case will proceed accordingly, with no consequences save those resulting
24 from the loss of evidence.'" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 710
25 F.2d 51, 64 (D.C. Cir. 1983)).

26 Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED
27 STATES under which Plaintiff explicitly consents to being governed by a number of statutes
28 which protect against disclosure that may compromise the national security including but not

1 limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt
2 to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything
3 connected to the national defense, §798 of Title 18 of the United States Code which makes it a
4 crime to disclose classified information concerning the communication intelligence activities of
5 the United States or any foreign government, and §1924 of Title 18 of the United States Code
6 which makes it a crime to remove or retain classified documents or material if such material has
7 been gained by virtue of one's office, employment, position or contract.

8 Not notwithstanding the objection, see attached Responses 12 (19 pages) and 15 (270
9 pages).

10 **REQUEST NO. 14:**

11 Documents sufficient to describe the corporate structure of Vision Airlines, Inc., Vision
12 Holidays, Inc., Vision Coach, Inc. and Vision Aviation Holdings, Inc., including all documents
13 that describe or reflect (i) the ownership of Vision Airlines, Inc., Vision Holidays, Inc., Vision
14 Coach, Inc. and Vision Aviation Holdings, (ii) the identity of the officers, directors, employees
15 or agents of Vision Airlines, Inc., Vision Holidays, Inc., Vision Coach, Inc. and Vision Aviation
16 Holdings, Inc., and (iii) the formation of Vision Airlines, Inc., Vision Holidays, Inc., Vision
17 Coach, Inc. and Vision Aviation Holdings, Inc.

18 **RESPONSE NO. 14:**

19 Nevada Secretary of State printouts are attached along with organizational chart (12
20 pages).

21 **REQUEST NO. 15:**

22 All of Vision's employee personnel files for any and all employees involved in any way
23 with flights to or from Iraq or Afghanistan.

24 **RESPONSE NO. 15:**

25 Objection. This request is beyond the scope of permissible discovery. See, e.g. *United*
26 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
27 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
28 Defendant has been in business) further this request is overly broad as it would include nearly

every employee of Plaintiff as they have all answered phones, delivered packages, repaired parts, swept runways which may in some way be related to flights to or from Iraq or Afghanistan also the request is not limited to such involvement while in Plaintiff's employment.

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed, expanded and explained recently in *Mohamed v. Jeppesen*, 9th Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting from the loss of evidence.'" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709 F.2d 51, 64 (D.C. Cir. 1983)).

Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED STATES under which Plaintiff explicitly consents to being governed by a number of statutes which protect against disclosure that may compromise the national security including but not limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything connected to the national defense, §798 of Title 18 of the United States Code which makes it a crime to disclose classified information concerning the communication intelligence activities of the United States or any foreign government, and §1924 of Title 18 of the United States Code which makes it a crime to remove or retain classified documents or material if such material has been gained by virtue of one's office, employment, position or contract.

Not notwithstanding the objection, see attached Response 15 (270 pages).

REQUEST NO. 16:

Documents sufficient to identify all Vision Employees who worked as crew members, including but not limited to captains, first officers, international relief officers, cruise pilots, flight attendants and mechanics on the flights to or from Iraq or Afghanistan.

RESPONSE NO. 16:

See attached Responses 12 (19 pages) and 15 (270 pages).

REQUEST NO. 17:

Visions state and federal tax returns from 2004 through 2008.

RESPONSE NO. 17:

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). There is no relation between the overall income of Defendants and whether Plaintiff was paid hazard pay which is the sole subject of this case. This information is also privileged.

REQUEST NO. 18:

All documents that relate to the duties, obligations and responsibilities of Vision to its employees.

RESPONSE NO. 18:

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services) and further this request would involve turning over handbooks, flight manuals, instruction manuals, safety manuals, training manuals for 1000's of employees during the scope of Defendants existence.

Notwithstanding the objection, see Response 12 attached hereto (19 pages).

REQUEST NO. 19:

All documents that relate to the calculation and basis for any fee charged by Vision to Capital Aviation, McNeil, CSC, any United States government agency, corporation, division or

1 department or any other contractor for providing air transport services to or from Iraq and
2 Afghanistan.

3 **RESPONSE NO. 19:**

4 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
5 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
6 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
7 Defendant has been providing such services).

8 Further Objection. This request violates the *Reynolds* doctrine as set forth in *United*
9 *States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952), which creates a privilege for in which the
10 "danger that compulsion of evidence will expose military matters which, in the interest of
11 national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed,
12 expanded and explained recently in *Mohamed v. Jeppesen* 9th Cir. Court of Appeals, Case No.
13 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any
14 evidence sought to be excluded to determine whether its contents are secret within the meaning
15 of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate,
16 however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933
17 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not
18 necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires
19 "simply that the evidence is unavailable, as though a witness had died [or a document had been
20 destroyed], and the case will proceed accordingly, with no consequences save those resulting
21 from the loss of evidence.'" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709
22 F.2d 51, 64 (D.C. Cir. 1983)).

23 Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED
24 STATES under which Plaintiff explicitly consents to being governed by a number of statutes
25 which protect against disclosure that may compromise the national security including but not
26 limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt
27 to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything
28 connected to the national defense. §798 of Title 18 of the United States Code which makes it a

1 crime to disclose classified information concerning the communication intelligence activities of
2 the United States or any foreign government, and §1924 of Title 18 of the United States Code
3 which makes it a crime to remove or retain classified documents or material if such material has
4 been gained by virtue of one's office, employment, position or contract.

5 Not notwithstanding the objection, see Response 4 attached hereto (18 pages).

6 **REQUEST NO. 20:**

7 All documents that relate to any fee, money, or other form of remuneration Vision
8 received for providing air transport services to or from Iraq and Afghanistan.

9 **RESPONSE NO. 20:**

10 Objection. This request is beyond the scope of permissible discovery. See, e.g., *United*
11 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request
12 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the
13 Defendant has been providing such services).

14 Not notwithstanding the objection, see Response 4 attached hereto (18 pages).

15 **REQUEST NO. 21:**

16 All documents related to any defense Vision might offer to the allegations or causes of
17 action in the Complaint.

18 **RESPONSE NO. 21:**

19 See attached Responses including Pilot Pay Comparison Analysis labeled Response 21 (8
20 pages). Defendant responds to each of the Requests for Production of Documents based upon
21 information and documentation available as of the date hereof and reserves the right to
22 supplement and amend their responses.

23 **REQUEST NO. 22:**

24 All documents referenced or described in Vision's Motion to Dismiss, Reply in Support
25 of Vision's Motion to Dismiss, Initial Disclosures, or Answer.

26 **RESPONSE NO. 22:**

27 See attached Response 15 (270 pages).

Defendant responds to each of the Requests for Production of Documents based upon information and documentation available as of the date hereof and reserves the right to supplement and amend their responses.

DATED this 8 day of May, 2009.

HAROLD P. GEWERTER, ESQ., LTD.

HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
2705 Airport Drive
North Las Vegas, Nevada 89032
Attorney for Defendant

CERTIFICATE OF SERVICE

Certification is hereby made that a true and correct copy of the foregoing Defendant Vision Airlines, Inc.'s Responses to Plaintiff's First Request for Production of Documents was served this 7th day of May, 2009, in the following manner:

X By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

By being hand delivered to the following individuals at their last known address, this same date, as follows; and/or

By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

Via Federal Express
DAVID M. BUCKNER, ESQ.
2525 Ponce de Leon, 9th Floor
Coral Gables, FL 33134

Via Regular U.S. Mail
Ross C. Goodman, Esq.
520 S Fourth Street
Las Vegas, NV 89101

Attorneys for Plaintiffs

M. A. Lewis
An employee of Harold P. Gewerter, Esq., Ltd.

VERIFICATION

STATE OF NEVADA

57

COUNTY OF CLARK

1

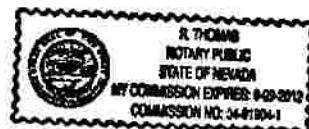
STEVEN ACOR, being first duly sworn, deposes and says:

That I am the C.O.O. of Defendant, Vision Airlines, Inc. in the above-entitled action; have read the foregoing Responses To First Set Of Interrogatories, know the contents thereof; and that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, they are believed to be true.

STEVEN ACOR

SUBSCRIBED and SWORN to before me
this 13 day of May, 2009.

NOTARY PUBLIC



HAROLD P. GEWERIER, ESQ., LTD.

HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
2705 Airport Drive
North Las Vegas, Nevada 89032
Attorney for Defendant

EXHIBIT 5

**LAW OFFICES OF
HAROLD P. GEWERTER, ESQ., LTD.**

Harold P. Gewerter, Esq.

February 2, 2010

**Via Facsimile: 305-372-3508
and Regular Mail**

David M. Buckner, Esq.
Brett Von Borke, Esq.
2525 Ponce de Leon, 9th Floor
Coral Gables, FL 33134

**Re: Vision Airlines adv. Hester, et al
Case No. 09-CV-117-RLH-RJJ**

Dear Gentlemen:

This letter is in response to your letter dated February 1, 2010. Several weeks ago you received nearly all of the documents which Vision promised to produce by January 7, 2010. As we discussed after the hearing on January 22, 2010, Vision is preparing a comprehensive package correlating payroll records concerning each individual flight. We have been informed we can expect to receive this material on or around March 5, 2010. Thus, based upon this estimate and given time for copying and date stamping I would anticipate these additional materials being delivered to you around March 10, 2010.

To date, however, you have received a complete list of all potential class members, including contact information, along with pertinent portions of their personnel files. You have also received an electronic version of payroll information from 2007 until the current date, and hard copies from May 5, 2005 to 2007.

As for the remaining 30(b)(6) depositions, I am informed that my clients are available in the middle of March. Please give me alternate dates so we can verify specific days in the middle of March for availability. Also, is Mr. Hester also going to be available for his deposition at the same time?

Vision adv. Hester
Page 2
February 2, 2010

As always, should you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

HAROLD P. GEWERTER, ESQ., LTD.



A handwritten signature in black ink, appearing to read "HPG".

Harold P. Gewerter, Esq.

HPG: ma
cc: Ross Goodman, Esq.
Client

**LAW OFFICES OF
HAROLD P. GEWERTER, ESQ., LTD.**

FAX COVER SHEET

TO: David M. Buckner, Esq./Brett Von Borke, Esq.

FAX NUMBER: 305-372-3508

TO: Ross Goodman, Esq.

FAX NUMBER: 702-385-5088

FROM: Harold P. Gewerter, Esq.

DATE: February 2, 2010

RE: Vision Airlines adv. Hester, Case No. 09-CV-00117

MESSAGE: Please see attached correspondence.

Number of pages (including cover): 3. If you do not receive all pages, please call the number below. This transmission is confidential and intended only for the use of the individual to whom it is addressed. If you have received this transmission in error, please call us immediately and mail it to the address below. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

HP Color LaserJet CM2320nf MFP

Fax Confirmation Report

HP LASERJET FAX GEWERTER
7023821759
Feb-2-2010 5:50PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
2525	2/ 2/2010	5:47:35PM	Send	13053723508	2:18	3	OK
2526	2/ 2/2010	5:49:59PM	Send	3855088	0:53	3	OK

LAW OFFICES OF
HAROLD P. GEWERTER, ESQ., LTD.

FAX COVER SHEET

TO: David M. Buchner, Esq./Westgate Park, Esq.
FAX NUMBER: 305-572-3508
TO: Ron Goodman, Esq.
FAX NUMBER: 702-385-3008
FROM: Harold P. GeWerter, Esq.
DATE: February 2, 2010
RE: Vision Airlines, Inc. Bunter, Case No. 09-CV-00117
MESSAGE: Please see attached correspondence.

Number of pages (including cover): 3 If you do not receive all pages, please call the number below. This transmission is confidential and intended only for the use of the individual to whom it is addressed. If you have received this transmission in error, please call or immediately and call it to the address below. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.